



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 18 2006

Via Certified Mail, Return Receipt Requested

Earl Allen Haywood

Washington, DC 20003

RE: MUR 5610

Dear Mr. Haywood:

On September 12, 2006, the Federal Election Commission (the "Commission") found that there is reason to believe that you, in your official and personal capacities, knowingly and willfully violated 2 U.S.C. § 441b and 11 C.F.R. § 103.3(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You were previously notified that on November 9, 2004, the Commission found reason to believe that you violated 2 U.S.C. §§ 432(b)(3), (c)(5), (h)(1), 434(b)(4)(H)(v), (6)(B)(v) and 439a(b). On September 12, 2006, the Commission voted to take no further action with respect to the violation of 2 U.S.C. § 432(h)(1).

28044183812

MUR 5610
Earl Allen Haywood
Page 2

If you have any questions,
please contact
Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis

28044183813

28044183814

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Earl Allen Haywood, in his official MUR: 5610
and personal capacities

I. GENERATION OF THE MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. BACKGROUND

While serving as Assistant Treasurer of the Dole North Carolina Victory Committee, Inc. ("the Committee") and the North Carolina's Salute to George W. Bush Committee, Inc. ("Salute Committee"), Earl Allen Haywood ("Haywood") wrote checks totaling approximately \$174,725 from bank accounts belonging to the committees, designating himself as payee. The Commission previously found reason to believe that Haywood knowingly and willingly violated 2 U.S.C. §§ 432(b)(3), 432(c)(5), 432(h)(1), 434(b)(4)(H)(v), 434(6)(B)(v), and 439a(b) of the Federal Election Campaign Act of 1971, as amended ("the Act").¹

I. III. FACTUAL AND LEGAL ANALYSIS

As Assistant Treasurer of the Committee, Haywood's duties included collecting and recording political contributions to the Committee, depositing the funds in the appropriate bank

¹ The facts relative to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA") Pub L. No. 10-55, 116 Stat 81 (2002) BCRA did not substantively alter the provisions of the Act relevant to the facts in this matter. All statements of the law that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations hereunder

1 accounts, accounting for funds received by the Committee, tracking all disbursements from the
2 Committee, and reporting this information to the Commission. During the course of performing
3 his duties, Haywood received and deposited contributions into the Committee's account that he
4 knew were from corporations. Furthermore, Haywood has acknowledged that he knew it was
5 illegal to accept corporate contributions.

6 It is unlawful for any candidate, political committee, or other person knowingly to accept
7 or receive any contribution from a corporation. 2 U.S.C. § 441b(a). Further, once a political
8 committee encounters a possible prohibited corporate contribution among the contributions
9 received, the contribution must either be refunded or deposited into the committee's campaign
10 bank account within 10 days of the treasurer's receipt while the treasurer determines whether it is
11 permissible. 11 C.F.R. § 103.3(b)(1). Commission regulations also require the treasurer to make
12 at least one written or oral request for evidence of legality and if not able to determine the
13 legality of the contribution, refund the questionable contributions within 30 days of receipt. *Id.*

14 In this matter, the evidence indicates that Haywood's actions in depositing the corporate
15 contributions were knowing and willful. The phrase knowing and willful indicates that "actions
16 [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited
17 by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Federal Election Comm'n v.*
18 *John A. Dramesi for Cong Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between
19 "knowing" and "knowing and willful"). A knowing and willful violation may be established "by
20 proof that the defendant acted deliberately and with knowledge" that an action was unlawful.
21 *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

1 Haywood recognized he should have taken specific steps to learn whether the entities
2 were corporations and, if so, then to refund the checks, but it is unclear whether anyone did this.
3 Haywood claimed that he believed that the fundraising staff from the participating committees
4 were supposed to follow up on questionable contribution checks before sending them to him. It
5 appears that Haywood received these checks from June through November 2002, did not deposit
6 them until various points between January 2003 and April 2003, and did very little or nothing
7 during those intervening months to correct the improper deposits or to refund the checks.
8 Regardless of who was supposed to conduct the required follow-up, Haywood admitted that he
9 knew, based on the names of the entities, that these checks were apparently from corporations
10 (e.g., "Steven D. Bell & Co.," "Britt Farms, Inc.," "Creative Packaging Solutions, Inc.") and that
11 it was illegal to accept corporate contributions. He admitted that he initially set these types of
12 checks aside, but ultimately deposited them in the DNCVC account even though he knew the
13 Committee could not accept such checks.

14 Therefore, based on the foregoing, there is reason to believe that Earl Allen Haywood
15 knowingly and willingly violated 2 U.S.C. § 441b and 11 C.F.R. § 103.3(b), in his official and
16 personal capacities.